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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

15 CHRISTOPHER LEE DUNN,

16 Plaintiff,

17 v.

18 BURBANK POLICE DEPARTMENT,
CITY OF BURBANK, and DOES 1
19 Through 100, Inclusive,

20 Defendants.

Case No. BC 417928

**NOTICE OF MOTION AND MOTION TO
COMPEL DEPOSITION OF JANE DOE;
MEMORANDUM OF POINTS AND
AUTHORITIES; REQUEST FOR
MONETARY SANCTIONS AGAINST
DEPONENT AND HER COUNSEL IN THE
AMOUNT OF \$5,509.20; DECLARATION
OF KRISTIN A. PELLETIER; [PROPOSED]
ORDER**

21 Date: May 12, 2010
22 Time: 8:30 a.m. *cal*
23 Dept.: 31

[Honorable Alan S. Rosenfield, Dept. 31]

24 Action Filed: July 28, 2009
25 Trial Date: August 27, 2010

app. due 4/29
reply due 5/5


1 **TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 12, 2010, at 8:30 a.m. in Department 31 of the
3 above-referenced court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendant City
4 of Burbank will and hereby does, move the Court for: (1) an order to compel the deposition of
5 Jane Doe¹; and (2) an order imposing monetary sanctions against Ms. Doe and her counsel David
6 D. Diamond, Esq. in the amount of \$5,509.20. This motion is made on grounds that an order
7 compelling Ms. Doe's deposition is necessary because Ms. Doe failed to appear at her properly
8 noticed deposition on February 5, 2010, changed the date of her rescheduled deposition from
9 March 22, 2010 to March 23, 2010, and then failed to appear once again. Despite the City's
10 repeated efforts to meet and confer with Ms. Doe's counsel to reschedule her deposition, Ms. Doe
11 has failed to appear or make any effort to reschedule her deposition.

12 This motion will be based upon the accompanying Memorandum of Points and
13 Authorities, Declaration of Kristin A. Pelletier, the Court's file in this action, and upon such oral
14 and/or documentary evidence or argument as may be submitted at or before the hearing on the
15 motion.

16
17 Dated: April 16, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier

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20 By: 
21 Kristin A. Pelletier
22 Attorneys for Defendant
23 City of Burbank
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27 ¹ The deponent is a former police informant who has requested that her identity not be
28 disclosed in court papers. While not required by law, *People v. Navarro*, 138 Cal.App.4th 146,
163 (2006), the City is willing to accede to this request for purposes of the instant motion. Thus,
she will be referred to as "Jane Doe" on the unsealed portions of this motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 16, 2009, plaintiff Christopher Dunn ("Dunn") filed a lawsuit for race
4 discrimination and wrongful termination, alleging that the City of Burbank (the "City")
5 terminated him from his position as a Burbank police officer because of his race (he is allegedly
6 half-Japanese).

7 Defendant contends that the actual reason Dunn was terminated was because he tipped off
8 an informant (herein, "Jane Doe") about a pending criminal investigation of her by the Culver
9 City Police Department, thereby compromising his integrity and impeding that investigation.

10 Because of these facts it is important to depose Ms. Doe in this matter. Both Dunn and
11 City have attempted to schedule her deposition on three different dates, but to no avail as Ms.
12 Doe's attorney, David D. Diamond, has continually cancelled the scheduled dates -- even dates he
13 has picked out and often at the last minute. The City's counsel has tried repeatedly to informally
14 resolve this problem, but has been unsuccessful in doing so. Because of the impending discovery
15 and motion cut-off deadline, as well as Ms. Doe's repeated refusal to appear for her deposition or
16 to provide a satisfactory explanation for such refusal, this motion could not be avoided.

17 For the reasons set forth below, the City is now moving (1) to compel the deposition of
18 Ms. Doe; and (2) for monetary sanctions and costs against Ms. Doe and her counsel in the amount
19 of \$5,509.20.

20 The City hereby respectfully requests the Court to order Ms. Doe's deposition to go
21 forward on either May 26 or 27, 2010, at 10:00 a.m. at Burke, Williams, and Sorensen, LLP, 444
22 South Flower Street, Suite 2400, Los Angeles, California 90071.

23 **II. STATEMENT OF FACTS**

24 On January 14, 2010, at 10:49 a.m., the City personally served Ms. Doe with a deposition
25 subpoena ordering her attendance at a deposition on February 5, 2010, at 10:00 a.m. at 200 N.
26 Third Street, Burbank, California 91510. (*Declaration of Kristin A. Pelletier* ¶3 [hereinafter
27 *Pelletier Decl.*]; Deposition Subpoena of Jane Doe and Proof of Personal Service, lodged
28 concurrently under seal as Exhibit A to *Pelletier Decl.*)

1 No objection to the deposition subpoena was served upon City. (*Pelletier Decl.* ¶4.)
2 Instead, on February 4, 2010, just one day before the scheduled deposition was to begin, City
3 received a telephone call from a David D. Diamond, Esq. Mr. Diamond advised City that Ms.
4 Doe would not be appearing for her deposition on February 5, 2010, in this matter because she
5 was going to file a lawsuit against the City. (*Id.*) Mr. Diamond further contended Ms. Doe's
6 deposition should be taken only in her own as yet un-filed case. He contended that the City
7 should wait some unspecified period of time if and until Ms. Doe filed her own case and served
8 the City before it took Ms. Doe's deposition. The City disagreed with this assertion, and advised
9 Mr. Diamond that Ms. Doe was a material, percipient witness in this matter and thus an
10 appropriate subject of deposition. (*Id.*)

11 Shortly thereafter Mr. Diamond faxed a letter to Burbank City Attorney Carol Humiston.
12 (*Pelletier Decl.* ¶5; Exhibit B.) In that letter, Mr. Diamond advised the City that his firm had
13 "been retained to represent [Jane Doe] in her claim against the City of Burbank." He went on to
14 state that he was not available to attend Ms. Doe's deposition on February 5, 2010 as he would be
15 "handling a civil matter in the Los Angeles Superior Court, North Branch, for a majority of the
16 day." This was interesting because Mr. Diamond had not mentioned this scheduling conflict in
17 his previous telephone conference with counsel for the City. (*Id.* at ¶5; Exhibit C.) Mr. Diamond
18 did not provide any alternative dates for taking Ms. Doe's deposition, or even indicate that Ms.
19 Doe would be made available at all. Instead Mr. Diamond contended that it would be more
20 appropriate to wait and depose Ms. Doe "during the discovery period in the case in which she is a
21 Plaintiff." (*Id.* at ¶5; Exhibit B.)

22 In an attempt to meet and confer, counsel for the City wrote back to Mr. Diamond that
23 same day. (*Pelletier Decl.* ¶6; Exhibit C.) In that letter, the City again noted that Ms. Doe had
24 been lawfully and properly subpoenaed to appear on that date several weeks previously. The City
25 also reiterated the earlier conversation between its counsel and Mr. Diamond and advised Mr.
26 Diamond of the scheduling difficulties in the case. Counsel for the City attempted to resolve the
27 matter by rescheduling the deposition later in the day and also provided alternative dates for Ms.

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1 Doe's deposition. (*Id.*) The City also asked that Mr. Diamond provide details regarding his
2 newly alleged scheduling conflict. (*Id.*)

3 Mr. Diamond did not agree to reschedule the deposition for later in the day. Nor did he
4 pick from any of the alternative dates proposed by the City. Nor did he provide details regarding
5 his sudden alleged conflict. Instead, Mr. Diamond responded by faxed letter. (*Pelletier Decl.* ¶7;
6 Exhibit D.) In that letter Mr. Diamond stated that "given [Jane Doe's] health, one deposition for
7 all matters maybe the most practical and humane approach." This was the first time Mr.
8 Diamond mentioned Ms. Doe's health as a reason for indefinitely continuing the deposition. (*Id.*)
9 Mr. Diamond stated that he would confer with Dunn's counsel and get back in touch with the
10 City. Ms. Doe did not appear for her deposition on February 5, 2010, and an affidavit of
11 nonappearance was issued. (*Id.* at ¶7; Exhibit E.)

12 By February 12, 2010, Mr. Diamond still had not agreed to any alternative dates to take
13 Ms. Doe's deposition. (*Pelletier Decl.* ¶8.) Because of this, the City sent a letter to Mr.
14 Diamond. (*Id.*; Exhibit F.) In that letter the City once again attempted to meet and confer with
15 Mr. Diamond, asking for a date on which to take Ms. Doe's deposition as well as information
16 regarding Mr. Diamond's alleged conflict on February 5, 2010. (*Id.*)

17 On February 16, 2010, the City received a letter dated February 12, 2010, from Mr.
18 Diamond. (*Pelletier Decl.* ¶9; Exhibit G.) In that letter Mr. Diamond still did not provide dates
19 for Ms. Doe's deposition. Nor would he provide additional information about the alleged conflict
20 he had purportedly had on February 5, 2010. Instead he had yet another excuse why Ms. Doe's
21 deposition should be precluded. Mr. Diamond indicated that he was not comfortable with a Ms.
22 Hutchinson taking Ms. Doe's deposition (an apparent reference to Senior City Attorney Carol
23 Humiston, who had never been slated to take ms. Doe's deposition), stating that "Ms. Hutchinson
24 is a named defendant in Ms. [Doe's] action." (*Id.*) He stated that he would give the City dates his
25 client would be available only after he had received input from Dunn's counsel. (*Id.*)

26 More correspondence followed including e-mail correspondence. (*Pelletier Decl.* ¶10;
27 Exhibit H.) Mr. Diamond finally informed the City that his client was available on March 22, and
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1 March 23, 2010. Mr. Diamond also agreed to accept service of Ms. Doe's deposition subpoena.
2 (*Id.*)

3 Dunn's counsel also wanted to take Ms. Doe's deposition. (*Pelletier Decl.* ¶11.) Because
4 of this, the parties agreed that the City would notice Ms. Doe's deposition for March 22,
5 2010 and Dunn's counsel would notice Ms. Doe's deposition for March 23, 2010. (*Id.*; Exhibits I
6 and J.)

7 However, on March 4, 2010, Mr. Diamond responded by e-mail that he was not available
8 to attend the deposition on March 22, 2010, and could only be available on March 23, 2010. This
9 was a surprise to the City since Mr. Diamond had picked the March 22, 2010 date. (*Pelletier*
10 *Decl.* ¶12; Exhibit H.)

11 Counsel for the City once again attempted to meet and confer with Mr. Diamond and
12 Dunn's counsel regarding the scheduling of Ms. Doe's deposition. (*Pelletier Decl.* ¶13.) Finally
13 it appeared that the parties would agree that the City would take the deposition of Ms. Doe on
14 March 23, 2010, instead of March 22, 2010. The City sent an amended deposition notice setting
15 Ms. Doe's deposition for March 23, 2010, at 9:00 a.m. (*Id.*; Exhibit K.)

16 On March 8, 2010, the City received a letter (dated March 5, 2010) from Mr. Diamond.
17 (*Pelletier Decl.* ¶14; Exhibit L.) In that letter Mr. Diamond refused to provide further
18 information about his alleged prior scheduling conflict (for the original, February 5 deposition
19 date), contending that the matter was moot.

20 On March 22, 2010, one day before the deposition was to go forward (on the third date set
21 for that deposition), counsel for the City called Mr. Diamond to confirm that his client's
22 deposition was going forward. (*Pelletier Decl.* ¶15.) Mr. Diamond indicated that he had not
23 reached his client to confirm the deposition, but would attempt to do so and call the City back. At
24 approximately 4:59 p.m. Mr. Diamond called counsel for the City stating that he wasn't able to
25 contact his client. He was concerned that she might be sick. He said that the deposition
26 (scheduled for the next day) "was off." (*Id.*)

27 On March 23, 2010, the City attempted to take the deposition of Ms. Doe. (*Pelletier Decl.*
28 ¶16; Exhibit M.) Neither Mr. Diamond nor Ms. Doe appeared and a second affidavit of

1 nonappearance was issued. (*Id.*) To date, despite numerous attempts at meeting and conferring,
2 Mr. Diamond has unilaterally cancelled Ms. Doe's deposition three times and has not provided
3 any alternative dates for taking Ms. Doe's deposition. (*Pelletier Decl.* ¶17.)

4 **III. ARGUMENT**

5 **A. Jane Doe Should Be Compelled To Attend And To Testify At Deposition.**

6 *Code of Civil Procedure* section 2020.220(c) provides that personal service of a
7 deposition subpoena is sufficient to require that the deponent attend the deposition and provide
8 testimony. If a nonparty disobeys a deposition subpoena, the subpoenaing party is authorized to
9 seek a court order compelling the nonparty to comply with the subpoena within 60 days after
10 completion of the deposition record. *See Code of Civ. Proc.* § 2025.480(b).

11 Non-parties may be commanded to appear for deposition through the issuance of a
12 deposition subpoena under *Code of Civil Procedure* §§ 2025.010 and 2020.020. The subpoena is
13 valid when a party uses the mandatory official form subpoena created for that purpose. *See*
14 *California Rules of Court* § 201.1(b). The form incorporates the requirements of sections
15 2020.510 (stating required contents of "records and testimony" subpoena) and 2020.310
16 (requiring subpoena to state time and place of deposition, nature of deposition, rights and duties
17 of deponent, penalties for disobedience, etc.). A deposition subpoena that does not request the
18 production of "consumer records," as that term is used in section 1985.3, need only be served at
19 least 10 days before the date of the scheduled deposition. *Code Civ. Proc.* § 2025.270(a).

20 If a person wishes to challenge any perceived defects in a deposition notice, he/she must
21 serve written objections, specifying the defect, upon the propounding party at least three days
22 before the deposition. *Code Civ. Proc.* § 2025.410(b). Any error or defect in a deposition notice
23 is waived if not promptly challenged. *Code Civ. Proc.* § 2025.410(a).

24 Here, the City personally served Ms. Doe 22 days before her deposition on February 5,
25 2010. It met all of the content requirements of section 2020.510. (Exhibit A to the *Pelletier*
26 *Decl.*) Ms. Doe did not contact the City's counsel or file any objection to her deposition
27 subpoena. Thus she has waived her right to challenge the validity of the subpoena.

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1 A person failing to appear pursuant to a subpoena or a court order
2 also forfeits to the party aggrieved the sum of five hundred dollars
3 (\$500), and all damages that he or she may sustain by the failure of
the person to appear pursuant to the subpoena or court order, which
forfeiture and damages may be recovered in a civil action.

4 A nonparty deponent who violates a subpoena has misused the discovery process. *Sears,*
5 *Roebuck & Co. v. National Union Fire Insurance Co. of Pittsburgh* (2005) 131 Cal. App. 4th
6 1342, 1350. *Code Civ. Proc.* § 2023.010(d), (e). A misuse of the discovery process is required to
7 be punished with monetary sanctions absent substantial justification or other circumstances that
8 would make a sanction unjust. *Code Civ. Proc.* § 2023.030(a). Furthermore, the sanctions
9 provided under *Code Civ. Proc.* § 2023 are available against an attorney who abuses the
10 discovery process as well. *Estate of Ruchti* (1993) 12 Cal.App.4th 1593, 1602-1603; *In re*
11 *Marriage of Lemen* (1980) 113 Cal.App.3d 769.

12 Here, Ms. Doe and Mr. Diamond have flouted the discovery process. Despite having been
13 properly served with a subpoena 22 days before her original deposition date, she and her counsel
14 refused to appear. Instead, they concocted a litany of excuses, often at the last minute, to avoid
15 having to appear. That Mr. Diamond invented an unspecified civil matter/conflict in the “Los
16 Angeles Superior Court, North Branch” to avoid the first deposition is evidenced by the fact that
17 he refused to provide any information regarding this purported conflict, despite repeated requests
18 from the City.

19 It is appropriate to impose sanctions against both Ms. Doe and Mr. Diamond because the
20 City was forced to incur attorney’s fees preparing for and trying to repeatedly reschedule this
21 deposition only to have Mr. Diamond and Ms. Doe cancel it at the last moment. The City is
22 entitled to seek sanctions equal to the attorneys fees and other costs associated with preparing for
23 and attending a deposition, including court reporter costs. *Code Civ. Proc.* §§ 1987.2, 2023.030.
24 Mr. Diamond and Ms. Doe have no substantial justification to have repeatedly disregarded the
25 subpoenas served upon her and there are no circumstances that would make such sanctions unjust.
26 Thus, the City is requesting that the Court impose sanctions in the amount of \$5,509.20 against
27 both Mr. Diamond and Ms. Doe, which represents the \$584.20 of court reporter fees, the \$1,475
28 in attorneys fees incurred in preparing for and attending the depositions where Ms. Doe did not

1 appear, the \$2,950 in fees incurred in meeting and conferring with Mr. Diamond to attempt to set
2 a deposition date and in preparing this motion, and the \$500.00 minimum forfeiture damages
3 provided for under *Code of Civil Procedure* sections 2020.240 and 1992. (*Pelletier Decl.* ¶18.)

4 **IV. CONCLUSION**

5 Based on all of the foregoing reasons, Defendant City of Burbank respectfully requests
6 that the Court grant (1) an order compelling Jane Doe to attend and testify at deposition, on either
7 May 26 or 27, 2010, at 10:00 a.m., continuing day to day until the deposition is completed; and
8 (2) an order imposing sanctions of \$5,509.20 against Jane Doe and her counsel David D.
9 Diamond.

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11 Dated: April __, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier

12
13 By: _____

14 Kristin A. Pelletier
15 Attorneys for Defendant
16 City of Burbank
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1 **DECLARATION OF KRISTIN A. PELLETIER**

2 I, Kristin A. Pelletier, declare as follows:

3 1. I make the following declaration based upon my personal knowledge, and if called
4 as a witness, I could and would, testify competently hereto. I make this declaration in support of
5 the City of Burbank's Motion to Compel Deposition of Jane Doe.

6 2. I am an attorney duly licensed and authorized to practice before all the courts of
7 the State of California. I am a partner in the law firm of Burke, Williams, & Sorensen, LLP,
8 attorneys for defendant, the City of Burbank ("the City") in this action. I am the partner to which
9 this matter has been assigned, and I am familiar with the facts and pleadings in this matter.

10 3. On or about January 14, 2010, Ms. Doe was personally served with a Deposition
11 Subpoena ordering her attendance at a deposition on February 5, 2010, at 10:00 a.m. at 200 N.
12 Third Street, Burbank, California 91510. According to the proof of service, Ms. Doe accepted
13 service of the Deposition Subpoena on January 14, 2010 at 10:49 a.m. Concurrently filed
14 herewith under seal as Exhibit A is a true and correct copy of Ms. Doe's Deposition Subpoena,
15 with the proof of service.

16 4. No objection to the deposition subpoena was served upon the City. On February
17 4, 2010, just one day before the scheduled deposition, I received a telephone call from a David D.
18 Diamond, Esq. During our conversation, Mr. Diamond advised me that Ms. Doe would not be
19 appearing for her deposition on February 5, 2010, in this matter because she was going to file a
20 lawsuit against the City, and Mr. Diamond believed that her deposition should be taken in her
21 own case. I disagreed with that assertion, and advised Mr. Diamond that Ms. Doe was a material,
22 percipient witness in this case and an appropriate subject of deposition.

23 5. Shortly thereafter Mr. Diamond faxed a letter to Burbank City Attorney Carol
24 Humiston. A true and correct copy of Mr. Diamond's February 4, 2010, letter is concurrently
25 filed herewith under seal as Exhibit B. In that letter, Mr. Diamond advised the City that his firm
26 had "been retained to represent [Jane Doe] in her claim against the City of Burbank." He went on
27 to state that he was not available to attend the deposition as he would be "handling a civil matter
28 in the Los Angeles Superior Court, North Branch, for a majority of the day." At no point during

1 my earlier conversation with Mr. Diamond, which took place shortly before his letter to Ms.
2 Humiston, did he mention this scheduling conflict. Mr. Diamond did not provide any alternative
3 dates for taking Ms. Doe's deposition, or even indicate that Ms. Doe would be made available at
4 all. Instead Mr. Diamond contended that it would be more appropriate to wait and depose Ms.
5 Doe "during the discovery period in the case in which she is a Plaintiff."

6 6. That same day I wrote back to Mr. Diamond. A true and correct copy of my
7 February 4, 2010, correspondence to Mr. Diamond is concurrently filed herewith under seal as
8 Exhibit C. In that letter, I reiterated that Ms. Doe had been lawfully and properly subpoenaed to
9 appear several weeks previously. I also noted that the date of her deposition had been agreed
10 upon by the parties and relayed to the Court, and that there were difficulties in scheduling
11 depositions because of plaintiff's counsel's busy schedule. I further noted that I would be willing
12 to start the deposition later in the day to accommodate Mr. Diamond's alleged conflict. Failing
13 that, I asked that Mr. Diamond provide me with a date for Ms. Doe's deposition that worked for
14 both him and plaintiff's counsel, and gave Mr. Diamond a number of dates from which to choose.
15 I also asked that Mr. Diamond provide me with the case name, number, and courtroom for the
16 appearance that he claimed to have had on February 5, 2010.

17 7. On February 5, 2010, Mr. Diamond responded by faxed letter. A true and correct
18 copy of Mr. Diamond's February 5, 2010 letter is concurrently filed herewith under seal as
19 Exhibit D. In that letter Mr. Diamond stated that "given [Jane Doe's] health, one deposition for
20 all matters may be the most practical and humane approach." This was the first time Mr. Diamond
21 mentioned Ms. Doe's health as a reason for indefinitely continuing the deposition. Mr. Diamond
22 did not choose a date from one of the alternative dates I had given him, but instead stated that his
23 staff would contact plaintiff's counsel to coordinate a date with plaintiff's counsel's calendar.
24 Ms. Doe did not appear for her deposition on February 5, 2010, and an affidavit of nonappearance
25 was issued. A true and correct copy of the affidavit of non-appearance is concurrently filed
26 herewith under seal as Exhibit E.

27 8. By February 12, 2010, I had still not received a date for Ms. Doe's deposition.
28 Because of this I sent a letter to Mr. Diamond. A true and correct copy of my February 12, 2010

1 correspondence to Mr. Diamond is concurrently filed herewith under seal as Exhibit F. In that
2 letter I again asked for Ms. Doe's deposition, as well as information regarding Mr. Diamond's
3 alleged conflict on February 5, 2010.

4 9. On February 16, 2010, I received a letter dated February 12, 2010, from Mr.
5 Diamond. A true and correct copy of Mr. Diamond's February 12, 2010, letter is concurrently
6 filed herewith under seal as Exhibit G. In that letter Mr. Diamond did not give me a date for the
7 deposition of Ms. Doe. Nor would he give me additional information about the alleged conflict
8 he had purportedly had on February 5, 2010. Instead he indicated that he was not comfortable
9 with a Ms. Hutchinson taking Ms. Doe's deposition stating that "Ms. Hutchinson is a named
10 defendant in Ms. [Doe's] action." He stated that he would give me dates his client was available
11 after he had conferred with plaintiff's counsel.

12 10. More correspondence followed including e-mail correspondence. A true and
13 correct copy of one such e-mail string is concurrently filed herewith under seal as Exhibit H. Mr.
14 Diamond finally informed me that his client was available on March 22 and March 23, 2010. Mr.
15 Diamond also agreed to accept service of Ms. Doe's deposition subpoena.

16 11. Plaintiff's counsel also wanted to take Ms. Doe's deposition. Because of this, we
17 agreed to notice Ms. Doe's deposition for March 22, 2010, and plaintiff's counsel noticed Ms.
18 Doe's deposition for March 23, 2010. A true and correct copy of our amended deposition
19 subpoena is concurrently filed herewith under seal as Exhibit I. A true and correct copy of
20 plaintiff's deposition subpoena is concurrently filed herewith under seal as Exhibit J.

21 12. On March 4, 2010, Mr. Diamond responded by e-mail that he was not available to
22 attend the deposition on March 22, 2010, and could only be available on March 23, 2010. This
23 was a surprise to me since Mr. Diamond had picked the March 22, 2010, date. (See Exhibit H.)

24 13. I conferred with plaintiff's counsel and we agreed that we would take Ms. Doe's
25 deposition on March 23, 2010. On March 4, 2010, I sent an amended deposition notice setting
26 Ms. Doe's deposition for March 23, 2010 at 9:00 a.m. A true and correct copy of this third
27 amended deposition notice is concurrently filed herewith under seal as Exhibit K.

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PROOF OF SERVICE

I, Julie D. Anderson, declare as follows:

1. I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is: 444 South Flower Street, Suite 2400, Los Angeles, California 90071.

2. On April 16, 2010 I served the foregoing document described as *Notice of Motion and Motion to Compel Deposition of Jane Doe; Memorandum of Points and Authorities; Request for Monetary Sanctions Against Deponent and Her Counsel in the Amount of \$5,509.20; Declaration of Kristin A. Pelletier; [Proposed] Order* on interested parties in this action by placing a true copy or original thereof enclosed in a sealed envelope addressed as follows:

Solomon E. Gresen, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
Telephone: (818) 815-2727
Fax: (818) 815-2737

David I. Diamond, Esq.
Law Offices of Diamond & Associates
1055 Wilshire Boulevard, Suite 1996
Los Angeles, CA 90017

☐ BY MAIL I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ BY FEDERAL EXPRESS I caused such documents to be served via Federal Express to the office of the addressee.

☐ BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the office of the addressee.

☐ BY TELEFACSIMILE I caused such documents to be served via facsimile transmittal to the office of the addressee.

☒ STATE ☐ FEDERAL

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and if called upon, I could and would competently testify thereto.

Executed on April 16, 2010 Los Angeles, California.

JULIE D. ANDERSON

LA #4833-1010-8678 v1